

*Personal*OLL 83-2306/2  
17 November 1983

## MEMORANDUM FOR THE RECORD

SUBJECT: Federal Employees Health Benefits Program (FEHBP)

REFERENCE: OLL 83-2306/1 Dated 2 November 1983, Subject: A Bill to Reform the Federal Emergency Health Benefits Program (FEHBP)


1. Attached are two additional FEHBP-related bills recently introduced--S. 2051 in the Senate and H.R. 4261 in the House. The Senate bill is, in my lay terminology, an anti-antitrust bill and not one with substantive FEHBP content. H.R. 4261 proposes creation of a Federal Employees Health Benefit Information Center.

2. This office will continue to monitor the progress of, and report on, these bills as appropriate.

  
Liaison Division  
Office of Legislative Liaison

Attachment:  
As stated

## Distribution:

Original - OLL Record w/atts  
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OLL:LD:TBC: aw (18 November 1983)

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summary of the conclusions of the SEC's 1982 Major Issues Conference; to the Committee on Banking, Housing, and Urban Affairs.

EC-1950. A communication from the Chairman of the Board of Governors of the Federal Reserve System transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-1951. A communication from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Review of the Audit of the Disabled American Veterans National Headquarters' Financial Statements for the year Ended December 31, 1982"; to the Committee on Veterans' Affairs.

EC-1952. A communication from the Comptroller General of the United States transmitting, pursuant to law, a report on proposals for 20 deferrals of budget authority totaling a \$1,924,778,000; jointly, pursuant to the order of January 30, 1975, to the Committees on Agriculture, Nutrition, and Forestry, Appropriations, Armed Services, the Budget, Commerce, Science, and Transportation, Energy and Natural Resources, Environment and Public Works, Finance, Foreign Relations, Governmental Affairs, and Labor and Human Resources.

EC-1953. A communication from the Assistant Secretary of Defense (Comptroller) transmitting, pursuant to law, 19 confidential selected acquisition reports for certain weapons systems; to the Committee on Armed Services.

EC-1954. A communication from the Director of the Defense Security Assistance Agency transmitting, pursuant to law, a report on a proposed foreign military sale to Saudi Arabia; to the Committee on Armed Services.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MATHIAS, from the Committee on Rules and Administration, without amendment:

S. Res. 269. An original resolution relating to a day care center for children of Senate employees (Rept. No. 98-298).

By Mr. McCURE, from the Committee on Energy and Natural Resources, with amendments:

S. 1090. A bill to establish a National Outdoor Recreation Resources Review Commission to study and recommend appropriate policies and activities for Government agencies at the Federal, State, and local levels and for the private sector, to assure the continued availability of quality outdoor recreation experiences in America to the year 2000, and for other purposes (with additional views) (Rept. No. 98-299).

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. TOWER, from the Committee on Armed Services:

The following named officer for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Maj. Gen. Paul W. Myers, 097-16-9174FR, United States Air Force (Exec. Rept. 98-19).

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SPECTER:

S. 2051. A bill entitled "The Health Care Cost Containment Act of 1983"; to the Committee on the Judiciary.

By Mr. HELMS (for himself, Mr. HUDDLESTON, Mrs. HAWKINS, Mr. WILSON, and Mr. SYMMS):

S. 2052. A bill to amend the Perishable Agricultural Commodities Act, 1930, by impressing a trust on perishable agricultural commodities and sales proceeds of such commodities for the benefit of the unpaid seller, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CHAFEE:

S. 2053. A bill to promote the full participation of severely disabled individuals in community and family life; to the Committee on Finance.

By Mr. SYMMS:

S. 2054. A bill to suspend for a 3-year period the duty on hydrazone, 3-(4-methylpiperazinyliminomethyl) rifamycin SV; to the Committee on Finance.

S. 2055. A bill to suspend for a 3-year period the duty on 5H-Dibenz (b,f.) azepine-5-propanamine, 10, 11-dihydro-N-methyl, monohydrochloride; to the Committee on Finance.

S. 2056. A bill to suspend for a 3-year period the duty on a 3-(Hydroxydiphenylacetylloxy)-1, 1-dimethylpiperidinium bromide; to the Committee on Finance.

By Mr. BUMPERS:

S. 2057. A bill to amend the Consolidated Farm and Rural Development Act to improve and streamline the provision of farm credit assistance through the consolidation of the real estate, operating, economic emergency, soil and water, limited resource, recreation and rural youth loan programs into one Agricultural Adjustment Loan; to reduce paperwork and make the FmHA loan process more responsive to farmers' needs; and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MOYNIHAN:

S. 2058. A bill to require the disposal of certain lands at Montauk Air Force Station, East Hampton Township, N.Y., for park and recreation purposes; to the Committee on Governmental Affairs.

By Mr. DOMENICI (for himself and Mr. HATCH):

S. 2059. A bill to provide revised reimbursement criteria for small rural health clinics utilizing National Health Service Corps personnel; to the Committee on Labor and Human Resources.

By Mr. JEPSEN:

S. 2060. A bill to provide that, in the case of any individual who dies while in active service as a member of the Armed Services as a result of disease, wounds, or injury incurred as a result of a hostile action outside the United States, any Federal income tax liability of such person with respect to the year of such persons death shall not apply; to the Committee on Finance.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 2061. A bill to declare certain lands held by the Seneca Nation of Indians to be part of the Allegany Reservation in the State of New York; to the Select Committee on Indian Affairs.

By Mr. HEINZ:

S.J. Res. 192. Joint resolution to extend the term of the Presidential Commission for

the German-American Tricentennial, and for other purposes; to the Committee on the Judiciary.

By Mrs. HAWKINS:

S.J. Res. 193. Joint resolution designating March 6, 1984, as "Frozen Food Day"; to the Committee on the Judiciary.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate were read, and referred (or acted upon), as indicated:

By Mr. MATHIAS from the Committee on Rules and Administration:

S. Res. 269. An original resolution relating to a day care center for children of Senate employees; placed on the calendar.

By Mr. MURKOWSKI (for himself, Mr. PERCY, Mr. PELL, and Mr. GLENN):

S. Res. 270. Resolution expressing the sense of the Senate with respect to the North Korean bombing in Rangoon; to the Committee on Foreign Relations.

By Mr. CHAFEE (for himself, Mr. BYRD, Mr. TSONGAS, Mr. MATTINGLY, Mrs. KASSEBAUM, and Mr. HATFIELD):

S. Res. 271. Resolution deploring the loss of life in the earthquake in Turkey; submitted and placed on the calendar.

By Mr. DURENBERGER (for himself and Mr. BOREN):

S. Con. Res. 84. Concurrent resolution to encourage State and local governments to focus on the problems of child custody, child support, and related domestic issues; to the Committee on Governmental Affairs.

## STATMENT ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 2051. A bill entitled the "Health Care Cost Containment Act of 1983"; to the Committee on the Judiciary.

HEALTH CARE COST CONTAINMENT ACT OF 1983

Mr. SPECTER. Mr. President, today I am introducing the "Health Care Cost Containment Act of 1983." This legislation is designed to confront what has become a national crisis—the disappearance of affordable health care in the United States.

By any statistical measure, health care costs are sharply on the rise, far outstripping the ability of most Americans to pay for it. Last year the health care component of the Consumer Price Index rose by 12.1 percent, more than twice the national inflation rate. A semiprivate hospital room in a big city now costs an average of almost \$300 a day, an increase of 160 percent since 1976.

Unchecked by market forces or regulation, escalating health care costs burden consumers in several punishing guises. There are higher taxes for medicare and Medicaid. Health insurance premiums steadily rise with annual increases of 30 percent or more. And aggregate higher health care costs ultimately fuel inflation at the expense of the quality of life of all Americans.

Health care is not a luxury. It is a basic necessity of life that cannot be allowed to slip inexorably out of the

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financial reach of American families. The Health Care Cost Containment Act of 1983 offers a useful step in controlling these costs.

Essentially, the legislation provides a limited antitrust exemption to accomplish two results. First, it would allow health care insurers to collaborate in collecting health care data on the costs and quality of care rendered by health care providers such as hospitals and clinics. This information base would promote better informed consumer choices on health care while spurring competition among the providers of such care. Second, it would allow insurers to enter into agreements with providers clearly stipulating the level and cost of health care, thereby promoting competition with the health care industry and giving further clarity to consumer decisions on how to choose health care most efficiently.

This legislation recognizes that it is the health care insurers, or so-called third-party payors of health care costs, that are in a good position to restrain costs. Consumers lack enough information under the present system. A limited antitrust exemption will give insurers a mechanism to more accurately assess costs so that they may intelligently deal with health care providers to the benefit of all consumers.

In order to insure that this exemption only promotes joint activities which help contain costs, the bill authorizes the Attorney General to investigate all the joint conduct provided hereunder. If the Attorney General determines that the joint activity fails to contain costs or unduly restricts competition, the bill provides that the Attorney General shall order the cessation of such activities. This investigatory and remedial power would effectively deter potential abuses of the limited antitrust exemption the bill provides.

The exemption is designed to override any conflicting State law which would prevent health care payors from performing the bill's designated activities. It is not intended to supersede State hospital cost control statutes or insurance laws which do not conflict with the bill's purpose, but which may impose additional duties or responsibilities on payors or providers.

The magnitude of the health care cost control problem compels Government and private business to take unusual steps to reach solutions. Antitrust exemptions are not suggested lightly. But in order to control costs and to promote competition, this narrow exemption appears to be warranted.

Since the Federal antitrust laws have been enacted, they have been of enormous benefit to our Nation in promoting competition. As a variety of economic problems have arisen, it has been appropriate to restructure the application of these antitrust laws in the interest of clarifying those laws to promote the national interest.

This legislation will provide a starting point to consider the wisdom of these proposed modifications. It may be that hearings and further consideration will prove these proposals unwise or subject to modification, but the problems are so serious that we shall consider the manner of dealing with these problems.

This legislation is not a panacea to the problem of exploding health care costs, but it offers a suggestion toward cost containment, a problem deserving our urgent attention. I ask unanimous consent that the bill be reprinted in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2051

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.*

Sec. 2. The Congress finds:

The spiraling costs of the United States health care system requires cooperation among various private sectors to control those costs;

The public interest requires that health insurers and other payors who reimburse recipients for the expense of health care, or pay providers directly on behalf of such recipients, be encouraged to work together to contain the cost to recipients; and

The health care cost spiral appears not only to be part of the national inflation in the cost of living, but also to exceed other inflation rates; and

Insurers and others have cooperated in the limited collection, exchange, interpretation and use of data on the delivery of and charges for health care services, with a salutary effect on health care costs; and

It is desirable that such cooperation continue and that the right to engage in further cooperative efforts to contain health care costs be clarified.

Sec. 3. As used in this chapter—

(a) "Health care provider" means an individual; group of individuals; hospital, clinic, partnership, corporation, association, company, firm or any other form of business enterprise which provides medical and other health services, or any association of such health care providers.

(b) "Insurer" means any individual, group of individuals, partnership, corporation, association, company, firm or any other form of business enterprise authorized to do the business of insurance or administer insurance under the laws of the United States or of a State, territory, district, or possession thereof, or any association of such insurers.

(c) "Health care services" means any item or service defined in 42 U.S.C. section 1395x (b), (c), (d), (f), (g), (h), (i), (j), (m), (n), (p), (q), and (s), all as amended.

(d) "Person" means an individual, group of individuals, partnership, corporation, association, company, firm or any other form of business enterprise.

Sec. 4. The antitrust laws, as defined in section 1 of the Clayton Act, and the Federal Trade Commission Act, shall not apply to any activity undertaken (either directly or through a third party or parties) individually by an insurer or other person engaged in making payments with respect to charges for health care services or jointly among such insurers or such persons for the purpose of

(a) acquiring, processing, reporting or analyzing information relating to the quality, cost or utilization of health care services, including reasonable and customary levels of

charges for such services, or collecting, distributing, publishing or using analyses or interpretations of such information;

(b) collecting and distributing insurance claims for health care services; or

(c) negotiating, entering into or acting upon agreements with health care providers with respect to the utilization of health care services or the levels of charges or reimbursement for health care services.

Sec. 5. (a) Activities permitted by this Act may be investigated at any time by the Attorney General for the purpose of—

(1) determining whether the activities under investigation are subject to the Act; or

(2) determining whether such activities have had the effect or will have the effect of increasing the cost of health care services or unduly restricting competition in the delivery or financing of health care services.

(b) In the event the Attorney General undertakes an investigation, all persons engaged in the particular activity that is the subject of the investigation shall be given notice thereof in writing. The Attorney General shall conduct his investigation in conformance with procedures to be established by him pursuant to section 553 of title 5, United States Code. If the Attorney General determines after the conclusion of such investigation that an activity does not comply with the requirements of this Act, he shall give written notice of such determination, which notice shall—

(1) include a statement of the circumstances underlying, and the reasons in support of, the determination; and

(2) state with specificity any actions required in order for the activity to come into compliance.

(c) If persons engaged in the activity under investigation fail to take the actions specified by the Attorney General within sixty days, he shall commence an action in the United States District Court for the District of Columbia to restrain and prevent the offending activity.

(d) In the event the district court finds that the venture or program is in violation of the requirements of section 4 or 5 of this Act, such court shall order the cessation of such activity.

(e) Any party aggrieved by the determination of the district court may, within thirty days of such determination, seek review by the court of appeals on the grounds that such determination is erroneous.

(f) Information generated in the course of any investigation or court action, or submitted by any person in connection therewith, shall be exempt from disclosure under section 552 of title 5, United States Code.

(g) Neither a determination by the Attorney General pursuant to subsections (a) and (b), or by the district court or court of appeals pursuant to subsections (d) and (e), nor any statements, opinions, or recommendations issued in connection therewith, shall be admissible in evidence in any administrative or judicial proceedings in support of any claim under the antitrust laws.

Sec. 6. This Act shall supersede any law of any of the several states that might otherwise prohibit the actions authorized within, the intent of Congress being to encourage payors or health care services to assist in containing health care costs.

By Mr. HELMS (for himself, Mr. HUDDLESTON, Mrs. HAWKINS, Mr. WILSON, and Mr. SYMMS):

S. 2052. A bill to amend the Perishable Agricultural Commodities Act, 1930, by impressing a trust on perishable agricultural commodities and